

**THE CORPORATION OF THE CITY OF WINDSOR  
OFFICE OF THE CITY ENGINEER- Engineering**



**MISSION STATEMENT:**

*"Our City is built on relationships – between citizens and their government, businesses and public institutions, city and region – all interconnected, mutually supportive, and focused on the brightest future we can create together."*

<b>LiveLink REPORT #: 17899 SE2015</b>	<b>Report Date: August 11, 2015</b> (PW#5029/lc-08/25/15:eb)
<b>Author's Name: Adam Pillon</b>	<b>Date to Council: September 8, 2015</b>
<b>Author's Phone: 519 255-6257 ext. 6612</b>	<b>Classification #:</b>
<b>Author's E-mail: <a href="mailto:apillon@city.windsor.on.ca">apillon@city.windsor.on.ca</a></b>	

**To: Mayor and Members of City Council**  
**Subject: 185 Ouellette Avenue – Encroachment update**

**1. RECOMMENDATION: City Wide:  Ward(s): \_\_\_\_\_**

I. THAT City Council **EXTEND** the encroachment agreement for 185 Ouellette Avenue for one (1) year (to July 1<sup>st</sup>, 2016) with an option to extend the encroachment agreement for an additional year (if required) at an annual encroachment fee of \$53,606.25.

**EXECUTIVE SUMMARY:**

N/A

**2. BACKGROUND:**

Hoarding at 185 Ouellette Avenue has been in place since 2010 and prior to 2015, this was without any plan to repair the deteriorating building facade. Hoarding in the right-of-way is meant to be a temporary measure to facilitate repair, maintenance and construction projects. On April 4<sup>th</sup> 2014 Council approved, Council Resolution 93/2014 (Appendix A) a report to have Public Works and Government Services Canada ("Canada") enter into an encroachment agreement for the "long term" hoarding.

Furthermore Council Resolution 93/2014 required the encroachment agreement at 185 Ouellette Avenue be reviewed yearly.

**3. DISCUSSION:**

An encroachment agreement (Appendix B) for the long term hoarding at 185 Ouellette Avenue between The Corporation of The City of Windsor and Canada was executed in October 2014. The agreement requires Canada to indemnify the Corporation from all claims and actions

brought against the Corporation arising out of the existence of the encroachment in the public right-of-way.

In October 2014, Canada paid annual encroachment fees for the long term hoarding at a cost of \$53,606.25, which was calculated with the following formula:

$$2589\text{sq.ft.} \times \$15.00 \times \text{Encroachment Factor (1.25)} = \$53,606.25$$

The long term hoarding fee formula was included in section 12.6 of the Encroachment Policy which was approved on February 17, 2015 (M67-2015).

Canada has developed a plan to repair the building facade which is expected to begin in the fall of 2015 with the expectation to have the work completed in 2016.

#### **4. RISK ANALYSIS:**

The hoarding on the sidewalks surrounding the facade in question has been designed and installed for the containment of a falling stone up to 10 kilograms in mass. The hoarding system has been deemed to provide adequate protection for the pedestrians and employees crossing beneath the hoarding and meet Section 64 of the OHS Regulations for public way protection.

There is a significant risk of exposure to health & safety, financial and reputation if the encroachment agreement is not extended. These risks are mitigated by allowing hoarding pursuant to the encroachment agreement and the indemnity provisions contained within the encroachment agreement with Canada.

#### **5. FINANCIAL MATTERS:**

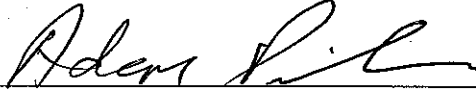
There is no cost to the City of Windsor for extension of the encroachment agreement although there would be revenue (annual encroachment fee) for the use of the public right-of-way. The 2014 encroachment fees were paid and Canada requested an extension for 2015 and 2016, the same fees of \$53,606.25 would apply annually.

#### **6. CONSULTATIONS:**

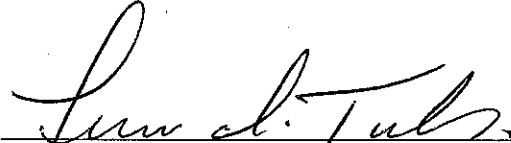
Tony Ruffolo – Engineering Development, Right-of-Way Supervisor  
Dana Paladino – Risk Management, Manager of Risk & Insurance

**7. CONCLUSION:**

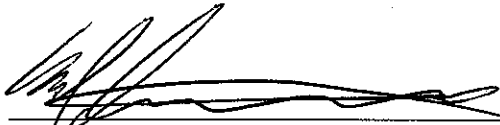
Administration recommends a one year extension with an optional additional year to the existing encroachment agreement executed by Canada given the intended plans to have the building facade repairs by end of 2016. An encroachment agreement is required for the protection of the public and to protect the Corporation from liability. The fees will encourage Public Works and Government Services Canada to follow through with their plans to preserve the designated heritage structure of 185 Ouellette Avenue.



**Adam Pillon**  
Technologist I



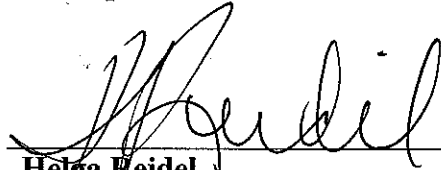
**France Isabelle-Tunks**  
Senior Manager Development, Projects and  
Right-of-Way/Deputy City Engineer



**Mark Winterton**  
City Engineer and Corporate Leader  
Environmental Protection and  
Transportation



**Shelby Askin Hager**  
City Solicitor and Corporate Leader  
Economic Development and Public Safety



**Helga Reidel**  
Chief Administrative Officer

**APPENDICES:**

- Appendix 'A' – Council Resolution 93/2014
- Appendix 'B' – Encroachment agreement at 185 Ouellette Avenue

**DEPARTMENTS/OTHERS CONSULTED:**

**Name:**  
**Phone #:**

**NOTIFICATION :**

Name	Address	Email Address	Telephone	FAX
Public Works & Government Services Canada - Ontario Region Attention: Mr. Altaf Patel Real Estate Advisor	4900 Yonge Street, 10 <sup>th</sup> Floor Toronto, ON M2N 6A6			

## Appendix 'A'

CR93/2014

D) That Public Works Canada **BE INFORMED** of the following conditions related to 185 Ouellette Avenue, Windsor, and the occupancy of the City right-of-way:

- a. The existing permit for hoarding **will be renewed** until July 2<sup>nd</sup>, 2014 only;
- b. After July 2<sup>nd</sup>, 2014, an Encroachment Agreement **must be entered into** to occupy the City of Windsor right-of-way which will include the following terms:
  - i. Fee for use of the right-of-way under the new fee structure for long-term encroachments until plans for renovations can be put in place;
  - ii. Indemnity and insurance in an amount satisfactory to the City Solicitor will be deposited;
  - iii. The Encroachment Agreement is to be reviewed yearly by City Council;
  - iv. That any other appropriate terms be included in this agreement, satisfactory in content to the City Engineer and form to the City Solicitor; and
  - v. That the CAO and City Clerk be authorized to sign the necessary Encroachment Agreement satisfactory in technical content to the City Engineer and form satisfactory to the City Solicitor.

II) That Public Works and Government Services Canada **BE REQUESTED TO FOLLOW** their own Facility Maintenance Policy to address the facade and building at 185 Ouellette and to maintain this heritage building.

III) That a new City wide Encroachment Agreement fee for use of City lands and rights-of-ways

**BE ESTABLISHED** for all properties, subject to the following conditions:

- a. For properties that have had hoarding of City rights-of-ways and/ or City property for two (2) or more years and construction and repair is not proceeding or ongoing, that an Encroachment Agreement be required and that the fee for use of City lands / rights-of-way will be calculated on the following formula:

**Cost to encroach on ROW/City Lands = Area of Encroachment x Land Value x Encroachment Factor (1.25)**

- b. Such Encroachment Agreements shall contain the following terms:
  - i. The Encroachment Agreement must be approved yearly by City Council;
  - ii. Proper Insurance must be submitted, to the satisfaction of the City Solicitor;
  - iii. The City Engineer and Chief Building Official (CBO), upon concurrence by the CAO, can extend the temporary hoarding to a period beyond two (2) years if construction is ongoing and the construction schedule is presented;
  - iv. Any other terms deemed appropriate by the City Solicitor;
  - v. That the CAO and City Clerk **BE AUTHORIZED** to sign the agreement satisfactory in technical content to the City Engineer and form satisfactory to the City Solicitor.

Carried

Appendix 'B'

THIS AGREEMENT made in triplicate this 11<sup>th</sup> day of June, 2014.

BETWEEN:

THE CORPORATION OF THE CITY OF WINDSOR

Hereinafter called the "CORPORATION"  
of the FIRST PART

- and -

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

Hereinafter called the "LICENSEE"  
of the SECOND PART

WHEREAS the Licensee is the registered owner of certain lands and premises in the City of Windsor, in the County of Essex and Province of Ontario, more particularly described in Schedule "A" annexed hereto and forming part of this Agreement.

AND WHEREAS the Licensee is encroaching into the public right-of-way (hereinafter called the "encroachment") approximately 265.61 metres square (2859 square feet), to be used in conjunction with the adjoining lands and premises municipally known as 185 Ouellette Avenue. The encroachment is more particularly described in Drawing No. C-3257 annexed hereto as Schedule "B" and forming part of this Agreement.

NOW THEREFORE WITNESSETH THAT:

1. The Corporation permits the Licensee to occupy and use the public highway for the purpose of the encroachment for a term commencing on July 2, 2014 and ending on July 1, 2015. Notwithstanding the foregoing, the term hereof shall automatically terminate and be at an end in the event that the portion of such public highway under encroachment shall be closed or stopped up by the Corporation such as to no longer constitute a public highway. Notice of not less than three (3) months will be given to the Licensee prior to termination of the Agreement. In the event that the Agreement is terminated prior to the end of the term, a pro-rated portion of the annual encroachment fee set out below shall be returned to the Licensee.

2. The Licensee covenants and agrees to pay to the Corporation an annual encroachment fee of FIFTY THREE THOUSAND SIX HUNDRED SIX  $\frac{25}{100}$  (\$53,606.25) DOLLARS, plus an Annual Billing/inspection Fee of TWENTY FIVE  $\frac{xx}{100}$  (\$25.00) DOLLARS, the first of which payments are for the whole of the year first hereinbefore written and shall become due and payable on the earlier of:

- (a) the execution of this agreement; or
- (b) the installation or assumption of the encroachment;

The Licensee further covenants and agrees to pay to the Corporation the following additional one time fees:

- (a) Encroachment Application Fee in the amount of \$157.50 (includes a 5% G.I.S. charge);
- (b) Agreement Preparation Fee in the amount of \$250.00;
- (c) Surcharge Deposit of \$100.00.
- (d) Fee of \$208.00 for a Street Opening permit.

3. The Licensee further covenants and agrees that the payment of the aforesaid fees may, at the discretion of the Corporation, be invoiced to the Licensee.

4. The Licensee further covenants and agrees to maintain the said encroachment in good repair at all times and to the satisfaction of the Corporation's City Engineer.

5. The Licensee further covenants and agrees to obtain the necessary permits from all pertinent Departments of the Corporation prior to any work on the said parcel, and the Licensee shall comply with all federal, provincial and municipal legislation pertaining to the construction, maintenance, repair and existence of the encroachment.

6. It is expressly agreed that, upon destruction, removal or replacement of the said building now erected upon the Schedule "A" lands, or upon partial destruction or damage to the said building from any cause including the voluntary act of the owner(s) thereof, to the extent of more than sixty percent (60%) of its assessed value, exclusive of its foundations, or upon breach by the Licensee of any of the provisions of this agreement which breach shall not have been corrected by the Licensee within 60 days of demand, the permission hereby granted shall, without any further action or notice and at the sole option of the Corporation, be terminated and at an end and the Corporation may require the Licensee to forthwith remove the said encroachment and restore the lands encroached upon to the satisfaction of the City Engineer and, upon failure so to do, may itself do all things necessary for the removal of the said encroachment and for such purpose may enter upon the Schedule "A" lands and, that the expense of such removal, restoration and entry shall be paid by the Licensee forthwith upon demand.

7. The Licensee further covenants and agrees to pay to the Corporation, Enwin Utilities and/or Windsor Utilities Commission any additional rates and/or charges, if any, levied or imposed on or in respect of the said portion of the public highway encroached upon or over by the said encroachment.

8. The Licensee further covenants and agrees to assume the responsibility and to pay for any additional costs or charges which the Corporation, Enwin Utilities, Windsor Utilities Commission, Union Gas Limited, Cogeco Cable Systems Inc. or Bell Canada, and their respective successors and assigns, may reasonably incur in the future installation or relocation of their services or utility plants by reason of such encroachment.

9. It is further understood and agreed by and between the Parties hereto that should, due to any emergency so declared by the Corporation's City Engineer, vacant possession of the encroached upon lands be required by the Corporation [whether in its own behalf or at the request of the utility providers mentioned in this Agreement] for the purpose of installing, repairing and/or maintaining watermains or pipes, wires, conduits, sewers or other services or utilities, the Corporation may give notice to the Licensee forthwith at any time to forthwith deliver vacant possession of the encroached upon lands to the Corporation and to therefrom remove all chattels, equipment, fixtures, parking areas, buildings and structures, as the case may be, installed or located therein or thereupon by the Licensee and, upon such notice having been given, the Licensee shall forthwith deliver such clear vacant possession of the Schedule "B" lands to the Corporation, provided that, should the Licensee fail to so do, the Licensee shall pay to the Corporation or any such service provider any costs or additional costs, expenses or damages incurred by the Corporation or any such service provider by reason of the Licensee's failure. A notice given under this section shall not constitute a termination of this Agreement but shall be a suspension thereof which shall be in force and effect during the time the work aforesaid is being carried out, and following the completion of such work this Agreement shall again come into and be in full force and effect subject to all the terms, covenants, conditions and provisos of this Agreement.

10. It is further understood and agreed by and between the parties hereto that, should the said portion of the public highway encroached upon be required by the Corporation for its purposes, the Licensee shall remove the said encroachment and restore the said public highway to the condition of the surrounding area at the Licensee's own expense, on sixty (60) days written notice from the Corporation to so do; provided that, if the Licensee fails to remove the said encroachment and restore as aforesaid, the Corporation may enter upon the said lands and premises of the Licensee and remove the said encroachment and restore the lands encroached upon and the expense of such removal and restoration shall be paid by the Licensee forthwith on demand. In the event of the foregoing, the Corporation will pay to the Licensee its pro-rated share of the annual encroachment fee set out herein.

11. It is further understood and agreed by and between the parties hereto that, should the Corporation at any time exercise its power or right to terminate this Agreement or demand the removal of the encroachment or suspend or revoke the permission granted herein, the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or any person for whom the Licensee is in law responsible.

12. Pursuant to the *Crown Liability and Proceedings Act*, the Licensee further covenants and agrees to defend, indemnify and save harmless the Corporation, its servants, agents and assigns, from and against all loss, costs or damages which it may suffer or be put to and from and against all claims or actions which may be made or brought against the Corporation, by reason of the said encroachment, its construction, existence, repair or maintenance or resulting therefrom in any way whatsoever and that the Licensee shall fully defend both itself and the Corporation and

pay for such defence, unless such loss, costs, damages, claims or actions arise due to the sole negligence of the Corporation, or the Corporation's officers, agents or employees.

13. It is further understood and agreed by and between the parties hereto that by the execution of these presents, the Licensee does hereby expressly and completely release the Corporation from any and all liabilities, suits, claims and demands (whether for property damage, bodily injury, personal injury, or death and whether founded in tort, contract or quasi-contract) which at any time might be exerted by the Licensee, arising out of the existence of the encroachment in the public highway.

14. It is further understood and agreed by and between the parties hereto that, should the Licensee agree to sell the said lands described in Schedule "A" hereto annexed, the Licensee shall give notice to the Corporation of such sale at least ten (10) days' prior to the completion thereof.

15. It is further understood and agreed by and between the parties hereto that all notices, demands and requests which may be or are required to be given by the Corporation to the Licensee or by the Licensee to the Corporation under the provisions of this Agreement shall be in writing and may be mailed or delivered and shall be addressed in the case of the Licensee to the Licensee at 368 Carling Crescent, Windsor, Ontario N8S 3X8 and in the case of the Corporation to the City Engineer and the City Clerk at City Hall, P.O. Box 1607, Windsor, Ontario N9A 6S1, or to such other address as either party may from time to time designate by written notice to the other.

16. It is further understood and agreed between the parties hereto that this Agreement shall be binding upon and enure to the benefit of the parties hereto, and it being acknowledged that in the event of the Licensee selling, conveying, transferring or entering into an agreement for sale or of transfer of any title to or interest in part or all of the Schedule "A" lands to a purchaser or transferee, the written consent of the Corporation must be obtained (which consent may not be unreasonably withheld by the Corporation, but may be made subject to conditions including a condition that such purchaser or transferee enter into a new encroachment agreement with the Corporation in the Corporation's then standard or usual form and for the fees as applicable at that time). If such written consent is not obtained, then the Corporation may forthwith terminate this Agreement or demand the immediate removal of the encroachment or forthwith revoke the permission granted for the encroachment, and may enter upon the Schedule "A" lands in whole or in part and remove the said encroachment and restore the lands encroached upon and the expense of such removal and restoration shall be paid by the Licensee or by such unapproved purchaser or transferee forthwith on demand or, at the Corporation's option, the payment of such expense may be enforced in the same manner as property taxes payable in respect of the Schedule "A" lands; and the Corporation shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Licensee or by such unapproved purchaser or transferee by reason of such termination, demand, revocation, entry, removal, or restoration.



THE PARTIES HERETO have executed and delivered this Agreement as of the day and year first hereinbefore written.

Authority  
CR 93/2014  
Approved  
As To Form  
*M*  
Legal Council

Authority  
CR 93/2014  
Approved  
As To  
Technical  
Content  
*SP*  
City Engineer

THE CORPORATION OF THE CITY OF WINDSOR

*Helga Reibel*  
HELGA REIBEL (Chief Administrative Officer)

*Valerie Critchley*  
VALERIE CRITCHLEY (City Clerk)

We have authority to bind the Corporation.

OWNER (Licensee):

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

*S. Mason*  
Name: S. MASON  
Title: *Regional Director, Accommodation and  
Portfolio Management*

Name:  
Title:

I/WE have authority to bind the Queen.

**SCHEDULE "A"**

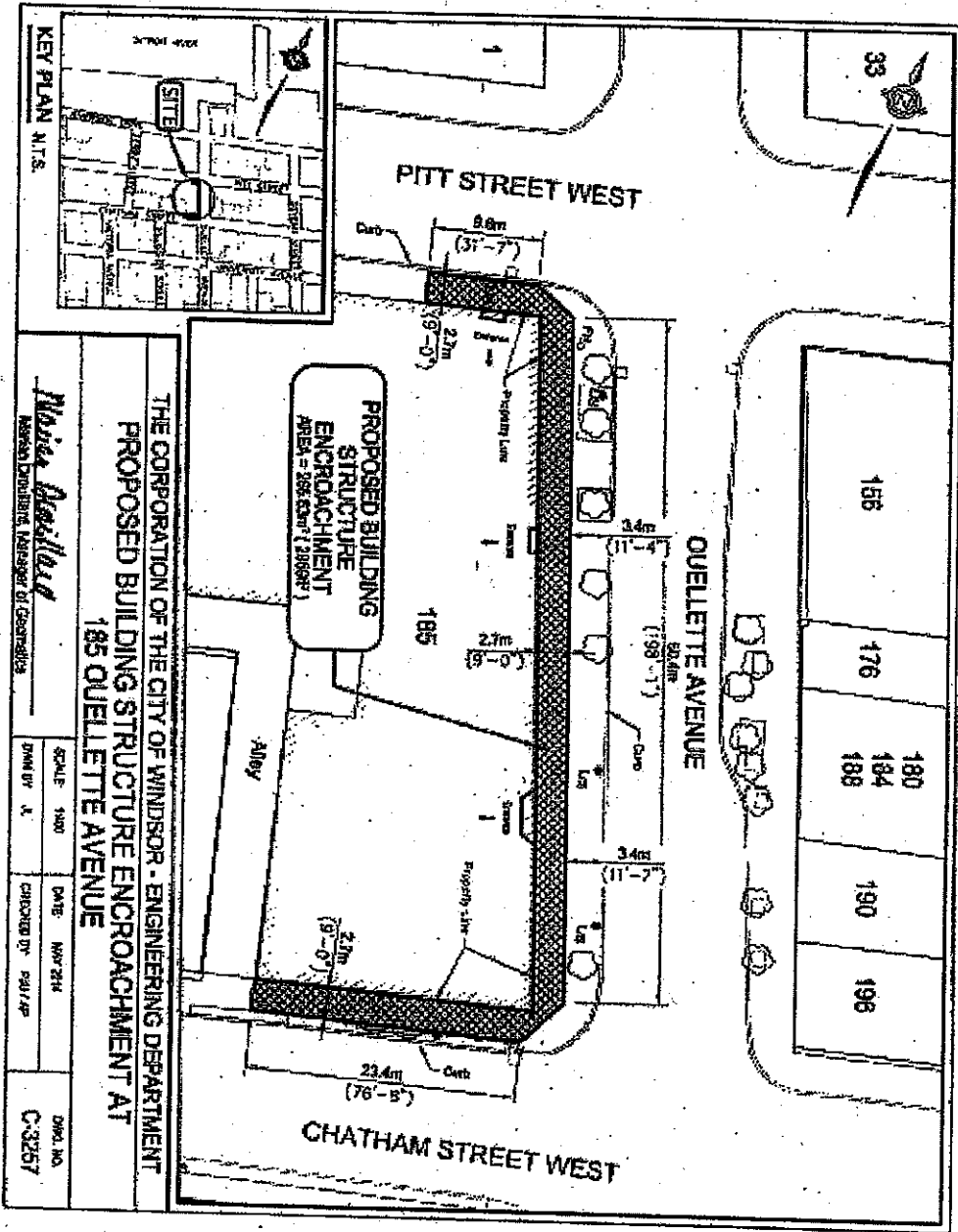
**LICENSEE'S LANDS**

Lot 2, Block L, Plan 84, Windsor; SAVE AND EXCEPT R200139; Part Lot 1, south side of Pitt Street, Block A, Plan 120, Windsor as in R168941 and R157271; Part Lot 2, south side Pitt Street, Block A, Plan 120, Windsor as in R150488; Part Lot 3, south side Pitt Street, Block A, Plan 120, Windsor as in R215418 and R209048; Part Lot 1, Block L, Plan 84, Windsor as in WT6808; Part Lot 3, Block L, Plan 84, Windsor; Part Lot 4, Block L, Plan 84, Windsor as in R143135 and R145592; Part Lot 5, Block L, Plan 84, Windsor as in R145592 and R157271; Part Lot 6, Block L, Plan 84, Windsor; Part Lot 7, Block L, Plan 84, Windsor as in WT6808 and WT7005; in the City of Windsor and County of Essex

Being PIN: 01194 - 0263 (LT)

Known municipally as 185 Ouellette Avenue, Windsor

SCHEDULE "B"



THE CORPORATION OF THE CITY OF WINDSOR - ENGINEERING DEPARTMENT  
**PROPOSED BUILDING STRUCTURE ENCROACHMENT AT**  
**185 OUELLETTE AVENUE**

*Marie Maclellan*  
 MARIE MACLELLAN, MANAGER OF CONSTRUCTION

SCALE: 1/8" = 1'-0"	DATE: NOV 21/14	DRAW NO. C-3267
DRAWN BY: J. A.	CHECKED BY: SJA/14P	